

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MARIA T GONZALEZ**

Claimant

**AGRI STAR MEAT & POULTRY LLC**

Employer

**APPEAL NO. 13A-UI-04052-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/03/13**

**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated March 25, 2013, reference 01, that held the claimant was not discharged for excessive unexcused absenteeism on March 7, 2013 and benefits are allowed. A hearing was held on May 9, 2013. The claimant did not participate. Laura Roney, Payroll/HR Assistant, participated for the employer.

**ISSUES:**

The issue is whether claimant was discharged for misconduct.

The issue is whether claimant is overpaid UI benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked as full-time general labor from April 14, 2010 to March 7, 2013. The employer issued claimant a written warning for absenteeism on November 8, 2012.

After failing to report three absences after the November warning, the employer suspended claimant on January 17, 2013 with a written warning. She was advised she needed to provide a doctor note to excuse any further absence.

Claimant was scheduled to report for work at 6:00 a.m. on March 6. She called the employer at 8:48 a.m. to report an absence due to illness. When she came to work on March 7 she had no doctor excuse. The employer discharged claimant for the absence because it was not timely reported and claimant lacked a doctor excuse.

The hearing notice was mailed to claimant's address of record, but it was returned to sender no forwarding address. UI Appeals staff checked the department record and claimant provided no new address. She received a partial UI benefit for the week ending March 9 in the amount of \$83.00.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes employer established misconduct in the discharge of the claimant on March 7, 2013, for excessive "unexcused" absenteeism.

The employer issued claimant a written warning and suspension to put her on notice that she had a serious absenteeism problem. Her further attendance issue due to a late call absence without excuse is unexcused and a current act of misconduct that constitutes job disqualifying misconduct in light of the prior discipline.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Since claimant has been disqualified in this matter after receiving a UI benefit, the overpayment issue is remanded to claims for a decision.

**DECISION:**

The decision of the representative dated March 25, 2013, reference 01, is reversed. The claimant was discharged for misconduct in connection with employment on March 7, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs